

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

DOUGLAS SHEPHERD, ALAN G. AND  
DELORES N. BARTEL, L.P. and  
1400 HAMPTON BLVD., LLC,

Plaintiffs

vs.

Case No.: **2:10cv343**

NATIONWIDE MUTUAL INSURANCE  
COMPANY and 1400 HAMPTON  
BOULEVARD CONDOMINIUM  
ASSOCIATION, INC.,

Defendants

**DEFENDANT’S MOTION FOR REMAND TO STATE COURT**

COMES NOW the defendant 1400 Hampton Boulevard Condominium Association, Inc. (“Association”), by counsel, under authority of 28 U.S.C. § 1447(a) to file this Motion to Remand to State Court, in opposition to the Notice of Removal filed by co-defendant Nationwide Mutual Insurance Company (“Nationwide”). The Association moves this Court for an Order remanding the matter to state court and awarding its actual costs incurred in securing remand, including attorney’s fees. In support of this Motion, the Association states as follows:

1. The *Notice of Removal* filed by Nationwide was based on, “28 U.S.C. §§ 1332, 1367, 1441 and 1446.” *Notice*, at 1. The cited provisions include subject-matter jurisdiction predicated on diversity of citizenship, supplemental subject-matter jurisdiction, general removal provisions and procedures governing removal.

2. The *Notice of Removal* is fatally defective as there is not complete diversity of citizenship to vest this Court with subject-matter jurisdiction under 28 U.S.C. § 1332.
3. The *Notice of Removal* is fatally defective as there is no basis for supplemental jurisdiction under 28 U.S.C. § 1367, as there is no subject matter jurisdiction for this Court to exercise.
4. The *Notice of Removal* is fatally defective as all defendants do not agree to the removal under 28 U.S.C. § 1441(a).
5. The *Notice of Removal* is fatally defective under 28 U.S.C. § 1441(b) as one of the defendants – the Association – is a citizen of the forum from which the action is to be removed.
6. The defendant Association does not agree with Nationwide’s decision to remove the matter to this Court and believes that the matter would be more appropriately handled in its original Court – the Circuit Court for the City of Norfolk.
7. The defendant Association requests its costs and attorney’s fees incurred in securing remand of the case to state court.
8. A cursory examination of the applicable law would have revealed that the federal courts do not properly have subject matter jurisdiction over the matter.

**WHEREFORE**, the defendant 1400 Hampton Boulevard Condominium Association, Inc. respectfully prays for; the entry of an *Order* remanding the matter to the state court; award of its costs and attorney’s fees in securing remand under authority of 28 U.S.C. § 1447(c); and for such further relief as may be warranted.

John S. Norris, Jr., Esquire (VSB #15860)  
Robert M. Lorey, Esquire (VSB #48507)  
Attorney for 1400 Hampton Boulevard  
Condominium Association, Inc.  
Norris, St. Clair & Lotkin  
2840 S. Lynnhaven Road  
Virginia Beach, Virginia 23452  
757-498-7700  
757-498-7744 (fax)  
jnorris@norrisstclair.com  
rlorey@norrisstclair.com

/s/ John S. Norris, Jr.  
1400 Hampton Boulevard  
Condominium Association, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of August, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

<p><b>1400 Hampton Blvd, LLC</b> <i>Plaintiff</i></p> <p><b>Alan G. and Delores N. Bartel, LP</b> <i>Plaintiff</i></p> <p><b>Douglas Shepherd</b> <i>Plaintiff</i></p>	<p><b>Randolph Courtland DuVall, Esquire</b> <b>Darlene Paige Bradberry, Esquire</b> Breedon Salb Beasley &amp; DuVall 1210 First Virginia Tower 555 Main Street Norfolk, VA 23510-2234 (757) 622-1111 (757) 622-4049 (fax) duvall@breedenlaw.net <a href="mailto:dbradberry@breedenlaw.net">dbradberry@breedenlaw.net</a></p>
<p><b>Nationwide Mutual Insurance Company</b> <i>Defendant</i></p>	<p><b>Wayne F. Cyron, Esquire</b> <b>James G. Smalley, Esquire</b> Law Offices of Wayne F. Cyron 100 N. Pitt St Suite 200 Alexandria, VA 22314 (703) 299-0600 wcyron@cyronmiller.com <a href="mailto:jsmalley@cyronmiller.com">jsmalley@cyronmiller.com</a></p>

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/s/ John S. Norris, Jr.

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Robert M. Lorey, Esquire (VSB #48507)  
Attorney for 1400 Hampton Boulevard  
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